



(1) the no strike article; (2) reduction in force based upon seniority and, (3) employee benefits to include vacation, sick leave, insurance and workers compensation. Two mediation sessions were held and a tentative agreement was reached on May 7, 1984. The four members of the union local served on the negotiating team reaching the mediated settlement. On approximately July 12, 1984, the union membership failed to ratify the mediated settlement by a vote of 11 to nothing, with votes cast against the agreement by members of the negotiating team.

On September 13, 1984, the parties returned to the table to determine the basis of the failure of the Union to ratify the mediated settlement. The Union presented the Town with 17 different articles which they said were unacceptable to the Union. The majority of these articles contain multiple areas of prior agreement reached during negotiations prior to mediation on April 30, 1984.

The Town alleges that the Union committed an unfair labor practice when, (1) the members of the Union's collective bargaining team which had supported an agreement in mediation voted against the agreement at the time of ratification and, (2) that the presentation of 17 demands following the failure to ratify when in fact only a fraction of that number were unsettled prior to mediation represents bad faith bargaining and evidence of the Union's lack of commitment to the principles of good faith bargaining as required in RSA 273-A:5, II (d).

The Union denies the allegations of the Town and moved to dismiss the complaint on the grounds that the matters that are alleged to comprise an unfair labor practice are strictly matters of internal union affairs and not an appropriate subject of an unfair labor practice complaint.

A hearing was held initially on November 29, 1984 with a continued hearing on January 24, 1985 at the Public Employee Labor Relations Board's office in Concord, New Hampshire with all parties represented.

#### FINDINGS OF FACT

At the hearings extensive testimony and exhibits established the following pattern of fact: The bargaining unit was established in early 1983 and had very little time to negotiate a contract prior to town meeting day in Merrimack which is in May. They were however able to agree to a simple one page contract for 1983 anticipating new negotiations for 1984. In October of 1983 the Town and the Union were able to agree to a set of ground rules for negotiations for the 1984 contract. These ground rules were subsequently modified to a small extent in early November of 1983 and negotiations were underway. Some nine negotiating sessions took place between October 1983 and February 17, 1984 when impasse was declared. At that point, the parties agreed to file for a mediator and one was appointed. On April 30 the parties met with the mediator and again on May 7 the parties met with a mediator and then signed a mediated agreement. The town meeting was held on May 10, 1984 and certain funds were put in the budget to cover the mediated agreement. On May 25, 1984 the Town transmitted the draft agreement to the Union. On July 20, the Union notified the Town that they had unanimously rejected the agreement.

Testimony and representations made by the Union counsel indicated that it was the Union's practice that the negotiators would not vote on the package that was before the membership and that indeed the vote was not simply a unanimous vote against the mediated agreement but the fact is that the negotiators did

abstain from the vote and that is the practice with the firefighters in general.

Subsequent to the Union's rejection of the mediated settlement, further negotiation settlement sessions were held and the Union's negotiators put forth additional articles for settlement. The thirteenth session for negotiations was held on October 1, 1984, with the mediator present. Again the Union presented certain demands for new language for a variety of articles beyond the mediated settlement. On October 3, 1984, the Town filed an unfair labor practice charge with the Public Employee Labor Relations Board charging that the Union had refused to negotiate in good faith. On October 5, 1984, an additional negotiation session was held with the mediator. The Town presented its offer which was basically the same wage increase as they had already given to the non-Union employees and the parties met again on October 26, their fifteenth negotiating session and their fifth with the mediator. The Union again rejected the offer, the Town asked the Union to divulge problems with their particular offer and asserted that if the Union were continually dissatisfied, the Town would declare an impasse and ask for a factfinder. The Union agreed to transmit problems to the Town by October 30, 1984 and in fact the Union did transmit certain proposals to the Town on October 31, which the Town estimated would be very costly to the Town of Merrimack.

Testimony received at the hearings indicated quite clearly that the matters in dispute, throughout negotiations, in addition to compensation were the no strike clause, the reduction in force by seniority clause and certain supplemental compensation in terms of fringe benefits and that various proposals had been circulated involving a variety of computations of compensation either hourly or weekly for various new and experienced firefighters. It also became clear that the Town in the summer of 1984 gave a 6% increase to its non-Union employees which was in fact greater than the mediated settlement that had been arrived at between the Union and the Town in its May 1984 meeting (which produced the mediated settlement that was subsequently rejected by the Union membership in July of 1984).

Testimony and exhibits clearly establish that the Union raised issues in the post mediation period which had not been the focus of the mediation sessions themselves but which might be included under the category of "language".

#### RULINGS OF LAW

Relative to the issue of the negotiation team's support for the mediated settlement, the Public Employee Labor Relations Board has held in the Wentworth case and in the Dover case that negotiators must support the agreement that they have negotiated. In this case, negotiators either abstained completely from the discussion on the negotiated package or in fact indicated their support verbally but did not vote in support of the package. Given that the vote was decisive, eight votes against the package, no votes in favor of the package, three abstentions on the vote, the negotiators could not have changed the outcome in this particular case. Therefore, the issue is in fact moot. However, the Public Employee Labor Relations Board's interpretation of the requirements to bargain in good faith in RSA 273-A is interpreted by us to mean that the negotiators must support the agreement that they have reached in some manner, shape or form. If this is not to be done by voting for the package it certainly must be done in some other manner, that is to say, the Union and/or employer negotiators must evidence their support for the negotiated agreement and may not under any conditions oppose the mediated or negotiated settlement.

With respect to the issue of raising new proposals in a post mediation period after the membership has rejected the mediated settlement, the attorney for the union argues that "when the contract was overwhelmingly rejected, the Union negotiators had no alternative but ascertain which issues had caused rejection and reopen the negotiations or mediation on those issues". We concur. When the mediated settlement failed a ratification by the membership, or if it had failed ratification by the Town, the reasons for that failure must be ascertained by the negotiators and those reasons must be a part of the new negotiation which begins immediately thereafter. In order to negotiate in good faith however, either side must limit their new proposals to realistic and workable proposals aimed at reaching or attempting to reach a negotiated settlement. It will be, of course, a matter of judgment as to what issues must be brought back to the negotiating sessions and/or to the mediation sessions in order to come up with an agreement satisfactory to both sides and one that stands a good chance of ratification by both sides.

DECISION AND ORDER

The Public Employee Labor Relations Board declines to find unfair labor practices against the Union in this case and orders that the complaint be and hereby is dismissed.



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ROBERT E. CRAIG, CHAIRMAN

Signed this 2nd day of April, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman, Russell Hilliard, Richard Roulx and Robert Steele present and voting. Also present, Evelyn C. LeBrun, Executive Director.